January 1, 1979 the Main Company in San Francisco considered Hawkins as its employee. The Clemco International Incentive Program which was formulated during the second half of 1979 (AB 20-37) treats Hawkins as an employee of the Main Company (AB34). Again the Clemco Incentive Plan contract dated October 17, 1979 (PB32) treats Hawkins as the employee of the Main Company whose employment with it had commenced on January 15, 1976. For these reasons I find that Hawkins was in the employment of the Main Company when his contract was terminated in June 1980.

In connection with the first head of Hawkins' claim, one has to keep in mind two matters. The first one is paragraph 2 of a letter written by Mark Cleary to Hawkins on November 24, 1975 (AB2) which reads:

"1. As discussed, the vacation period mentioned in Paragraph 7 of the contract, in your case will be three weeks of the first year, and from the second year forward, will consist of four weeks. After three years, the Company will pay one month's home leave consisting of return air fare from Singapore to the United States, be it Chattanooga or any other point that you designate in the U S."

The other one is Clause 6 of the Employment Agreement (AB8) which reads:

"This Agreement shall be construed in accordance with the laws of the State of California, United States of America."

It is not disputed that at the time when Hawkins service was terminated in June 1980 he was in receipt of a salary of S$8166.66 per month and that 14 weeks leave had not been taken by him. On the evidence of Theodore Harper (DW3) who gave expert evidence on Californian law on matters connected with employment I accept as a fact that in California leave accrues on a vested basis from day to day and consequently can be accumulated from year to year and from day to day until terminated. Having so found on the facts, I find that Hawkins succeeds on this claim of S$28,583.31.

Again in connection with the second head of Hawkins' claim one has to read his Employment Agreement together with Mark Cleary's said letter of November 24, 1975 to Hawkins (AB2). On so doing it seems to me that, although Hawkins was recruited in Singapore, he was to be treated and was, indeed, treated as if he had been recruited in the States. This being so there is to be implied in the contract of employment a term that even if his services were terminated for cause he would be repatriated at the employers' expense. The plaintiffs suggest that as Hawkins has local interests he is not entitled to or has forfeited his return air fare. There was, however, no such evidence before me. I therefore allow Hawkins his claim for a return air fare to Chattanooga, Tennessee, in the sum of S$2,990/—.

There will therefore be Judgment against the 1st defendants in the sum of $34,529.53 and against the 2nd defendant in the sum of $10,426.69. In the circumstances of this case I make no order as to costs both on the claim and the counterclaims.

Claim allowed.

Solicitors: *Cheong & Cheong; Godwin & Co.*

JOO YEE HOLDINGS PTE. LTD. v. BOEY KUN HONG & ORS.

[O.C.J. (Chua J.) April 9, 1986]

[Singapore – Originating Summons No. 933 of 1984]

Contract – Option – Purchase of entire paid-up shares in company owning 3 parcels of land – Application for redevelopment approved – Alienation of State land – Warranties by defendants – Increase in premium and stamp duty – Whether defendants liable to pay.

Contract – Option – Purchase of shares subject to unqualified warranties – Breach of warranties – Increase in premium – Whether defendants liable to pay.

The principal issue in this case was whether the defendants had any basis to resist the plaintiffs' claim for the sums of $545,200 and $16,364 as the differences in the premium and stamp duty respectively payable for the alienation of State land. The computation of the revised premium showed that it was based on an area of 485.6 sq.m., an increase of 20.2 sq.m.

The defendants executed on February 19, 1981, a written option for the purchase by the plaintiffs of the entire paid-up 2.5 million shares in Natwest Development (Pte) Ltd. (Natwest) at a price of $50 million. The plaintiffs exercised the option and paid in accordance with the agreed terms the full purchase price for the said shares. At the time the said option was given, Natwest was represented *inter alia* to own three parcels of land, the approximate area of which is 5009.5 sq. ft. or 465.4 sq.m. (subject to survey). The three parcels of land represented the only substantial assets of Natwest and in principle planning approval had been obtained from the relevant authorities for a comprehensive development of these three parcels of land (the project land). The defendants applied to the Commissioner of Lands for a change in the nature of the re-development from a 19-storey banking hall cum hotel

building to a 20-storey banking cum office building, which was approved. The premium for the alienation of State land was increased to "$12,566,000.00 (subject to adjustment after survey)." Following final survey, the Commissioner claimed the said sums of $545,200 and $16,364 from the plaintiffs, who demanded payment from the defendants. The defendants disclaimed liability. On September 4, 1984, Natwest paid the Commissioner of Lands the sums of $545,200 and $16,364 as demanded. In their claim against the defendants, the plaintiffs rely on the warranties given by the defendants under clause 7 of the Agreement, *viz.* that the responsibility for the original purchase of the three parcels of land must rest with the defendants.

Held: (1) there is no basis for the defendants to resist the plaintiffs' claim;

(2) the plaintiffs are entitled to the declarations sought and the defendants must pay the plaintiffs the said sums of $545,200 and $16,364 with interest at the rate of 15½% per annum, as provided for in the Agreement.

[*Editorial Note:* The defendants' appeal against this judgment was dismissed by the Court of Appeal (Lai Kew Chai, Rajah JJ. and Chan Sek Keong J.C.) in Civil Appeal No. 17 of 1986 on March 17, 1987. However, the interest payable on the $545,200 and $16,364 was varied up to 9% p.a.]

ORIGINATING SUMMONS.

C. S. Wu for the plaintiffs.
Cheong Yuen Hee for the defendants.

Cur. Adv. Vult.

Chua J.: On February 19, 1981, the defendants executed a written Option for the purchase by the plaintiffs of 2.5 million shares in Natwest Development (Pte.) Ltd. (Natwest) at a price of $50 million. These shares represented the entire paid-up share issue in Natwest.

On March 2, 1981, the plaintiffs exercised the said Option, and in accordance with the agreed terms, they paid the defendants in due course the full purchase price for the said shares.

At the time the said Option was given, Natwest was represented to own the properties –

(1) situate at Telok Ayer Street/McCallum Street, Singapore, and known as Lots 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139 and 140, Town Subdivision II (the Orange Parcel) which properties are freehold;

(2) situate at the same place as the Orange Parcel and known as Lots 126, 127 and 128, 141 and part of Lots 138, 139, 140 and 96-2, Town Subdivision II (the Yellow Parcel) which properties are leasehold properties for 99 years effective October 9, 1980, having purchased same from the Commissioner of Lands, Singapore, at the price of $1,630,000.00. The purchase price has been paid in full and Natwest would at the time of completion of the sale and purchase be vested with the full beneficial interest free from any encumbrances or liens of any kind, save and except the Building Agreement to be entered into with the Commissioner of Lands and Natwest as to completion of the project. The approximate area of these properties is 5009.5 square feet (465.4 sq.m.) (subject to survey);

(3) situate at McCallum Street being part of Lot 96-2, Town Subdivision II (the Green Parcel) which property is freehold having purchased same from the Bangkok Bank Limited at the price of $100,000.00. The full purchase price has been paid and Natwest would at the time of completion of the sale and purchase be vested with the full beneficial interest free from any encumbrances or liens of any kind except for an easement of right of way over this property granted to the Bangkok Bank Limited for access to the utility service area.

At the date of the said Option, the three parcels of land represented the only substantial assets held by Natwest and in principle planning approval had been obtained from the relevant authorities for a comprehensive development of the three parcels of land (the Project Land) for a banking hall and offices with a plot ratio of 5. It was provided in the said Option that the development charges levied by the relevant authorities for conversion to commercial zoning and any increase in permitted plot ratio "shall be for the account of the Vendors."

The Yellow Parcel was purchased by Natwest from the Commissioner of Lands by way of an alienation of State land at a "premium of $1,630,000.00 (subject to adjustment after survey)."

Following the application made by the defendants to the Commissioner of Lands for a change in the nature of the re-development from a 19-storey banking hall cum hotel building to a 20-storey banking hall cum office building, which was approved, this premium was increased to "$12,566,000.00 (subject to adjustment after survey)."

Following final survey of the Yellow Parcel, the Commissioner of Lands wrote to the plain-

tiffs' then solicitors on October 10, 1983, claiming the sums of $545,200.00 and $16,364.00 as the differences in the premium and stamp duty respectively payable for the alienation of the State land. The computation of the revised premium showed that it was based on an area of 485.6 sq.m., an increase of 20.2 sq.m.

The plaintiffs' then solicitors wrote to the defendants' solicitors requesting the defendants to pay those sums, but without success. On December 20, 1983, the plaintiffs' then solicitors made a formal written demand for the payment of these two sums. In a letter dated January 3, 1984, the defendants' solicitors disclaimed liability on behalf of the defendants.

On September 4, 1984, Natwest paid the Commissioner of Lands the sums of $545,200.00 and $16,364.00 as demanded.

By this Originating Summons the plaintiffs claim against the defendants jointly and severally –

"1. A Declaration that the additional premium and stamp duty amounting to $545,200 and $16,364 respectively claimed by the Commissioner of Lands in his letter to the Plaintiffs' then solicitors of 10th October, 1983, in respect of the alienation of the State Land described in the Commissioner's letter to the Defendants' solicitors of 30th August, 1980, amounts to a breach by the Defendants of the warranties stipulated in Clause 7(h), (j), (k) and (t) of the Option Agreement entered into between the Defendants as Transferors and the Plaintiffs as Transferees dated 19th February, 1981;

2. A Declaration that the Defendants' refusal to pay the said sums of $545,200 and $16,364 on request made by the Plaintiffs' then solicitors in their letter of 20th December, 1983, amounts to a breach by the Defendants of the warranty stipulated in Clause 7 (p) of the said Option Agreement;

3. Recovery of the said sums of $545,000 and $16,364 with interest by way of damages for the defendants' breach of the said warranties;

4. Such other reliefs as may be just and equitable; and

5. That provision may be made for the costs in respect of these proceedings."

The plaintiffs' case is this. The three parcels of land and the planning approval for their development were the only assets owned by Natwest, the defendants' holding Company. Under the terms of the Agreement, the defendants sold the entire equity holdings in Natwest to the plaintiffs for the sum of $50 million, thereby effectually transferring ownership of the three parcels of land with the planning approval for their development to the plaintiffs.

The sale is subject to the warranties given by the defendants to the plaintiffs under Clause 7 of the Agreement. The plaintiffs rely on warranties (h), (j), (k), (p) and (t) They are as follows:–

"(h) All development charges, architect fee, property tax, income tax and all other dues and debts of the Company have been discharged or shall be discharged on completion.

....

(j) That the Company is free of all debts and has not entered into any long term or abnormal contract or undertaken any obligations whatsoever except such as are usual and necessary in the ordinary and proper course of its business.

(k) That the balance sheet and profit and loss account of the Company as at December 31, 1980 (hereinafter referred to as the said date") (a copy of which is attached hereto) gives a true and fair view of the financial position of the Company as at the said date and in particular, save as is stated in the aforementioned balance sheet, there are no other liabilities of the Company as at the said date.

....

(p) The Transferors shall be responsible and pay all loans liabilities or moneys owed if any by the Company to various creditors and this sale to the Transferees is free of all loans, liabilities and moneys owed.

....

(t) Up to the date of completion there are none and will be no liabilities contingencies undisclosed or otherwise of the Company other than what have been expressly disclosed in the said balance sheet as at the said date."

The argument of counsel for the plaintiffs is that these warranties make it abundantly clear, and this is supported by the manner in which the Agreement is structured as a whole, that the responsibility for the original purchase of the three parcels of land must rest with the defendants, since the plaintiffs were effectually purchasing these three parcels of land and their development, from the defendants for a substantial sum of $50 million.

The events that took place are these. In August 1979 the defendants had an option to purchase the Red Parcel. They intended to build a hotel on the land. However, they were informed that the development could only be approved if the Yellow Parcel was included and amalgamated to the Red Parcel. The defendants' solicitors wrote to the Commissioner of Lands in August 1979 asking him to

confirm that the Government was prepared to alienate the Yellow Parcel to the defendants. The Commissioner replied the next day stating that the Government was prepared to alienate the Yellow Parcel. The defendants in the course of submitting the plans for the proposed development discovered that for their project it was necessary for them to purchase the Green Parcel.

In the meantime the defendants incorporated Natwest for the purpose of purchasing the Red Parcel and carrying out the proposed development of a hotel. All the defendants then took shares in the Company in the proportion set out in the Schedule to the said Option exercised by the plaintiffs.

The Company Natwest was hopeful of getting planning approval for its project based on a plot ratio of 10:1. While their plans were still being considered by the planning authorities, the Commissioner of Lands wrote to the Company's solicitors on August 30, 1980, stating that he was prepared to recommend the alienation of the Yellow Parcel upon certain terms and conditions. The relevant terms were: "Area: 465.4 sq.m. (5,009.5 sq.ft) (subject to survey)" and "Premium: $1,630,000.00 (subject to adjustment after survey)."

The Company accepted the Commissioner's terms and conditions and paid the 10% deposit of $163,000.00 on September 15, 1980.

The Company also purchased the Green Parcel from the Bangkok Bank Ltd. for $100,000.00.

In the meantime the Company's plans were approved by the planning authorities in principle but the permitted plot ratio was 5:1 instead of the anticipated 10:1 As an appeal to the authorities failed, the Company submitted fresh plans for a banking hall/office building instead on October 7, 1980, as the hotel project would not be financially viable.

Before the new plans were dealt with by the planning authorities, the Commissioner of Lands notified the Company's solicitors on October 10, 1980, that alienation was expected and to get ready the balance of the premium payable.

On October 21, 1980, the Commissioner wrote to the Company's solicitors (WPP 6) informing them that the Government had on October 9, 1980, approved the alienation of the Yellow Parcel to the Company. The Company was advised to demolish the existing vacant buildings on the land as soon as possible.

On November 25, 1981, the planning authorities approved the new plans in principle.

On February 19, 1981, the plaintiffs were granted the said Option to purchase from the defendants all the issued share capital in the Company, which the plaintiffs exercised on March 2, 1981.

The Company was, in the meantime, obliged under the terms of alienation to execute a Building Agreement for its original plans for a hotel. It did so and sent the duly executed Building Agreement to the Commissioner of Lands on March 3, 1981, with the knowledge and consent of the plaintiffs.

Having regard to the terms of alienation the parties thought it desirable that the Company should write to the Commissioner of Lands seeking his formal approval for the change in plans. Accordingly, the Company's solicitors wrote on April 24, 1981, seeking his formal approval.

To the utter surprise of both the plaintiffs and the defendants, the Commissioner wrote to the Company's solicitors on May 27, 1981, stating that the Land Office was now prepared to recommend the alienation of the State land to the Company for their amended development "on the following revised terms and conditions." The area was the same as that in the previous intended alienation but the premium was increased multifold to "$12,566,000/– (subject to adjustment after survey)."

After some discussion between the plaintiffs and the defendants, the Company decided to accept the new terms of alienation subject to an appeal to the Minister. The defendants also agreed to bear the increased premium. Consequently, the Company's solicitors wrote to the Commissioner on June 11, 1981, accepting the new terms of alienation.

On July 6, 1981, the Company's solicitors, with the knowledge and consent of the plaintiffs, wrote to the Minister of Law pleading with him to reduce the premium. This appeal, however, failed.

On July 22, 1981, the plaintiffs' solicitors wrote to the defendants' solicitors confirming that

completion of the sale and purchase of the shares in the Company would take place on July 28, 1981. Also, if the appeal to the Minister of Law was successful, any reduction in the premium payable would be returned to the defendants.

The argument of counsel for the plaintiffs is that it is common ground that the increase in the premium was to be borne by the defendants and this fact coupled with the defendants' claim to the refund in the event the premium should subsequently be reduced are both supportive of the plaintiffs' contention that the terms of the Agreement intended that the defendants alone must bear responsibility for the payment of the premium whatever the final amount might be. Following the eventual survey of the area of the State land, a further sum of $545,200.00 was found to be payable. The defendants resiled on their warranties under the Agreement and the plaintiffs have had to pay the sum of $545,200.00 plus the further sum of $16,364.00 in order to effectuate the alienation of the State land to Natwest. The alienation was a term of the planning approval and the payment of the additional premium being prerequisite to the alienation, the defendants' refusal to bear the balance of the premium due also amounts to a breach of the warranties given under Clauses 7(b) and (f) which cover the deducing of proper titles to the property in question and the planning approval for the development.

The contention of the defendants is that Clause 3 of the Recital of the Agreement clearly recites that the terms of the alienation of the State land form part of the agreement of sale and purchase and that the effect of this Clause is that the parties were fully aware of a possible adjustment of the premium after survey. At the time of completion the parties knew or believed that no survey had taken place. Consequently the possibility of an additional premium was not within the contemplation of the parties and was not included in any of the warranties referred to in Clause 7(h), (j), (k), (p) and (t) of the Agreement. The defendants further contend that the defendants were never in breach of Clause 7(k) as the Balance Sheet and Profit and Loss Account of the Company as at December 31, 1980, gave a fair view of the financial position of the Company as at the said date .

I do not agree with the defendants' contention that the parties' prior awareness that the premium might be adjusted at a later date after survey released them from their liabilities under the warranties.

The warranties are unqualified. The warranty 7(h) is to the effect that there is no outstanding liability on completion in relation to development charges *etc.* and must relate to transactions entered into prior to completion. The moment the additional premium arose the warranty is breached.

The warranty 7(j) is also breached when the additional premium became payable .

The warranty 7(k) is to the effect that the balance sheet and profit and loss account of the Company as at December 31, 1980, "gives a true and fair view of the financial position of the Company" as at December 31, 1980, and "in particular, save as is stated in the aforesaid balance sheet, there are no other liabilities of the Company as at the said date." When the additional premium became payable this warranty is also breached.

The warranty 7(p) must mean that the defendants are responsible to pay all loans, liabilities or money arising at a future date as the sale to the plaintiffs is "free of all loans, liabilities and moneys owed."

The warranty 7(t) expressly warrants that "up to the date of completion there are none and will be no liabilities contingencies undisclosed or otherwise of the Company other than what have been expressly disclosed in the said balance sheet as at the said date." "Or otherwise" must mean "disclosed." The defendants were aware at that time of the existence of a possible contingent liability consequent upon the survey of the State land and this contingent liability was not disclosed in the balance sheet. This warranty has also been breached.

In the affidavit of Wan Pong Poh, the 2nd defendant, he says that he has reason to believe that the Commissioner of Lands knew that the area of the alienated land contained an area of not less than 485.6 sq. metres in 1980 or 1981 when the alienation was made and that the development plans had been approved on the basis of an increased land area of 20.2 sq. metres (making it 485.6 sq. metres) and consequently the plaintiffs would have suffered no damage as a result of the alleged breaches of the warranties (which is denied). He further says that if the Land Office did in fact know of the actual area in 1981 when the aliena-

tion was made, their claim for the additional premium and stamp duty is untenable. And if the plaintiffs chose to pay these amounts (which they were not legally obliged to) they cannot seek reimbursement from the defendants.

The defendants called Mr. Hang Yong Hoe, a Planner with the Development and Building Control Division of the Ministry of National Development, to give evidence. Mr. Hang's evidence did not support the 2nd defendant's belief.

The evidence of Mr. Hang was that on July 4, 1981, the Land Office had confirmed to the Development & Building Control Division that the area of the alienated State land was 486.5 sq. metres; that the architects for Natwest applied to his department for permission to amend the plans to take advantage of an alleged increase in the land area of the alienated State land amounting to 20.2 sq. metres; that his department replied on December 11, 1984, to the effect that as far as the Development & Building Control Division records were concerned there was no increase in land area and that in fact there was a reduction of 0.9 sq. metres and that the lesser area of 465.2 sq. metres appeared to have been derived when the Land Office quoted Lot 96-2pt as having an area of 58.8 sq. metres (estimated) when it should have been 79.9 sq. metres; that consequently his department turned down the architects' application.

It has not been suggested by the defendants that, if the area had turned out to be less, the plaintiffs are entitled to retain the refund on the premium that had been paid. In fact the defendants themselves had expressly precluded such retention. (See letter of defendants' solicitors dated July 28, 1981, to plaintiffs' solicitors). The Agreement is not for the sale of the three parcels of land but the sale of the defendants' 2.5 million Natwest shares of $1 each for the sum of $50 million, *i.e.* at $20 per share.

The defendants next contend that it would appear that the plaintiffs made payment to the Commissioner of Lands without satisfying themselves whether a survey was actually made after the alienation and submit that in the circumstances the plaintiffs cannot claim reimbursement from the defendants.

The Company's solicitors did before payment was made to the Commissioner seek confirmation of the area and clarification came from the Commissioner on February 22, 1984. The suggestion by the defendants that there might not have been a survey is without foundation.

It is also contended by the defendants that the Commissioner of Lands is not entitled to receive the additional sums alleged to be due. It is argued that the Commissioner can only alienate State land under the State Lands Act, Cap. 285. Under section 9 no grant or lease shall be issued for any State land unless and until the land has been surveyed and demarcated to the satisfaction of the Commissioner and if for any sufficient reason it is found impractical to cause an immediate survey to be made, the Commissioner may enter into an agreement with the applicant for a grant or lease, and such an agreement shall be in the form and or to the effect of Schedule B. Under Clause 6 of Schedule B it is provided that the Commissioner shall cause the land to be surveyed with all convenient despatch. The alienation of the Yellow Parcel was on October 9, 1980, and stipulates that the premium shall be adjusted after survey. The Company was asked by the Commissioner to enter into occupation of the alienated land and to demolish the vacant shophouses which it did. It is submitted that Clause 6 of Schedule B applies to the alienation of the Yellow Parcel and consequently the Commissioner was obliged to survey the alienated land with all convenient despatch and not until 3 years later when the Company had almost completed building the 20-storey banking hall/offices.

The point of law relied upon by the defendants is misconceived. Schedule B was repealed by the State Lands (Amendment) Act, 1980, with effect from January 15, 1981. The defendants are wrong in contending that the alienation was on October 9, 1980. The letter of October 21, 1980, (WPP 6) from the Commissioner of Lands stated that the Government had on October 9, 1980, approved the alienation of the State land subject to terms, not that the State land had been alienated. Then there was an application to the Commissioner for his approval for the change of nature of the development on April 24, 1981. By letter of May 27, 1981, (WPP 10) the Commissioner replied that "the Land Office is now prepared to recommend the alienation of the State land to ... M/s Natwest Development (Pte.) Ltd. for their amended development on the following revised terms and conditions." It was made clear in paragraph 6 of the letter: "Kindly note that this communication does not constitute a revised offer of alienation as the President's approval has yet to be sought." The

premium was revised to $12,566,000. It is clear from Natwest's solicitors' letter of June 11, 1981, to the Commissioner (WPP 11) when accepting the revised terms and conditions that the solicitors were aware that the State land had not been alienated on October 9, 1980, as the letter stated: "Our clients understood that the revised premium is for the 20-storey bank/office building to be constructed on the land and as such, no development and/or rezoning charges would be paid in respect of *the land to be alienated* to our clients." The Certificate of Title dated March 22, 1983, (Ex A attached to the affidavit of Andrew Tan Kim Guan) shows beyond doubt that the Yellow Parcel was not alienated on October 9, 1980, as contended by the defendants. October 9, 1980, is the date of commencement of the 99-year lease.

There is no basis for the defendants to resist the plaintiffs' claim. The plaintiffs purchased the Company Natwest for $50 million. Why should the plaintiffs pay for the defendants any part of the purchase price for the Yellow Parcel? The premium is the purchase price and the defendants are obliged to pay it. The additional premium and additional stamp duty are clearly contingent liabilities that were in existence at the time of the said Option and come within the scope of the warranties which the plaintiffs rely.

There will be an order in terms of prayers 1, 2 and 3 of the Originating Summons, with interest at the rate of 15½% per annum (which is the rate of interest provided for in the Agreement in the event that the plaintiffs or the defendants were in default under Clause 4, and Clause 7(b) and (c)). The defendants are also to pay costs on solicitor and client basis.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Y.H. Cheong.*

A MALAYSIAN REPORTS

TUN DATUK HAJI MOHAMED ADNAN ROBERT v. TUN DATU HAJI MUSTAPHA BIN DATU HARUN; DATUK JOSEPH PAIRIN KITINGAN v. TUN DATU HAJI MUSTAPHA BIN DATU HARUN

B [S.C. (Abdul Hamid C.J. (Malaya), Hashim Yeop A. Sani & Abdoolcader S.C. JJ.) October 21, 1985]

[Kuala Lumpur – Supreme Court Civil Appeals Nos. 274 and 271 of 1985]

C *Constitutional Law – Appointment of Chief Minister – Application for declaration that appointment of plaintiff as Chief Minister valid and that subsequent revocation of appointment and appointment of 2nd defendant as Chief Minister ultra vires and therefore null and void – Preliminary objection – Justiciability – Political issue – Whether privilege of State Legislative Assembly involved – Federal Constitution, art. 72 – Sabah Constitution, art. 6(3).*

D *Jurisdiction – Whether principle of forum non conveniens applies – Whether respondent's action justiciable.*

The respondent in these cases had applied to the court for declarations that his appointment as Chief Minister of Sabah by the first appellant was valid and that the subsequent revocation of his appointment and the appointment of Datuk Joseph Pairin Kitingan (the 2nd appellant) as Chief E Minister were *ultra vires* and therefore null and void. The appellants had raised a preliminary objection that the court had no jurisdiction to hear the action and grant the declaratory reliefs sought. The High Court overruled the objection and the appellants appealed.

F **Held:** justiciable issues do in fact arise for judicial determination in this case and the matter falls within the jurisdiction of the court for adjudication.

Cases referred to:

(1) *Republic of Bolivia* v. *Bolivian Navigation Company* (1876) 24 W.R. 361; [1876] W.N. 77.
(2) *Stephen Kalong Ningkan* v. *Government of Malaysia* [1968] 1 M.L.J. 119.
G (3) *Stephen Kalong Ningkan* v. *Tun Abang Haji Openg & Tawi Sli* [1966] 2 M.L.J. 187.
(4) *Fan Yew Teng* v. *Government of Malaysia* [1976] 2 M.L.J. 262.
(5) *Dato Menteri Othman bin Baginda & Anor.* v. *Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 M.L.J. 29.
H (6) *Merdeka University Berhad* v. *Government of Malaysia* [1981] 2 M.L.J. 356.
(7) *Malone* v. *Metropolitan Police Commissioner* [1979] 1 Ch. 344.
(8) *Madan Murari* v. *Choudhuri Charan Singh* A.I.R. 1980 Cal. 95.
I (9) *Dinesh Chandra Pande* v. *Chaudhury Charan Singh & Ors.* A.I.R. 1980 Delhi 114.
(10) *Jogendra Nath Hazarika* v. *State of Assam* A.I.R. Gauhati 1982, 25.
(11) *Bradlaugh* v. *Gossett* (1884) 12 Q.B.D. 271.
(12) *The King* v. *Sir R.F. Graham-Campbell & Ors.* [1935] 1 K.B. 594.
(13) *Republic of Italy* v. *Hambros Bank* [1950] Ch. 314.